

THE OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Chief Procurement Officer of the District of Columbia, pursuant to authority granted to the Mayor by section 204 of the District of Columbia Procurement Practices Act of 1985 (PPA), effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-302.04), Title II of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 4-1501.01 *et seq.*)(2006 Supp.), as amended by Title II of the Omnibus Public Safety Amendment Act of 2006, effective April 24, 2007 (D.C. Law 16-306; 54 DCR 6577) (Act), Mayor's Order 2002-207 (dated December 18, 2002) and Mayor's Order 2007-95 (dated April 18, 2007) hereby gives notice of the adoption of the following emergency rules and of the intent to adopt final rulemaking to add a new Chapter 5 of Title 27 of the District of Columbia Municipal Regulations (Contracts and Procurement). The rulemaking is intended to implement section 211 of Title II of the Act authorizing the Mayor to issue rules requiring that criminal background and traffic records checks be obtained for applicants for employment with, and employees and unsupervised volunteers of any private entity that contracts with the District to provide direct services to children or youth as those terms are defined in the Act.

Mayor's Order 2007-95 delegates to the Chief Procurement Officer the authority vested in the Mayor in section 211 of the Act to issue rules governing the criminal background check and the traffic record check requirements in sections 203 and 204(b)(2) of the Act, for persons and private entities being considered for contractual work providing direct services to children and youth for District covered agencies.

The rules were originally adopted as emergency and proposed rules on August 17, 2007 and published in the *D.C. Register* on September 7, 2007, at 54 DCR 8846. After Council review, certain changes were made which required substantive changes to the rules as originally adopted.

This emergency rulemaking action, pursuant to section 6(c) of the District of Columbia Administrative Procedure Act, effective October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c)), is justified by the need to ensure preservation of the welfare of children and youth being served by contractors with the District of Columbia agencies listed in Mayor's Order 2007-95. These emergency rules will replace those currently in effect, and remain in effect up to one hundred twenty (120) days from date of adoption, unless earlier superseded by another rulemaking notice or by publication of a Notice of Final Rulemaking in the *D.C. Register*.

The Chief Procurement Officer also gives notice of intent to take final rulemaking action in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The Chief Procurement Officer will submit the rules to the Council of the District of Columbia for a

sixty (60) day period of review pursuant to subsection 205(b) of the PPA (D.C. Official Code § 2-302.05(b)), and will not take final rulemaking action until completion of the 60-day review period or Council approval of the rules by resolution before the end of the review period.

A new Chapter 5 is added to Title 27 to read as follows:

CHAPTER 5

CRIMINAL BACKGROUND AND TRAFFIC RECORDS CHECKS FOR DISTRICT GOVERNMENT CONTRACTORS THAT PROVIDE DIRECT SERVICES TO CHILDREN OR YOUTH

500 GENERAL PROVISIONS

- 500.1** A private entity that provides services as a covered child or youth services provider, as defined in section 202(3) of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 4-1501.01 *et seq.*), as amended (Act), shall obtain criminal history records to investigate persons applying for employment, in either a compensated or an unsupervised volunteer position, as well as its current employees and unsupervised volunteers.
- 500.2** A private entity is required to obtain traffic records to investigate persons applying for employment, or current employees and volunteers of private entities, when that person will be required to drive a motor vehicle to transport children in the course of performing his or her duties.
- 500.3** The following individuals are not required to submit to a criminal background check:
- (a) Applicants for, or employees or volunteers working in positions at a private entity that will not bring them in direct contact with children or youth;
 - (b) Applicants, employees and volunteers who have federal security clearance; or
 - (c) Volunteers who have only supervised contact with children or youth.

501 NOTICE TO PRIVATE ENTITY

- 501.1** Each solicitation and contract subject to the Act, shall:
- (a) identify the positions that will require a criminal background check and/or a traffic record check;

- (b) contain a clause requiring the private entity to inform all applicants requiring a criminal background check that a criminal background check must be conducted on the applicant before the applicant may be offered a compensated position or an unsupervised volunteer position;
- (c) contain a clause requiring the private entity to inform all applicants requiring a traffic records check that a traffic records check must be conducted on the applicant before the applicant may be offered a compensated position or a volunteer position;
- (d) contain a provision requiring the private entity to obtain a written authorization from each applicant, employee and unsupervised volunteer which authorizes the District to conduct a criminal background check;
- (e) contain a provision requiring the private entity to obtain a written confirmation from each applicant, employee and unsupervised volunteer stating that the private entity has informed him or her that the District is authorized to conduct a criminal background check;
- (f) contain a provision requiring the private entity to obtain a signed affirmation from each applicant, employee and unsupervised volunteer stating whether or not they have been convicted of a crime, pleaded nolo contendere, are on probation before judgment or placement of a case upon a stet docket, or have been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses in the District of Columbia or their equivalent in any other state or territory, or for any of the following felony offenses or their equivalent in any other state or territory:
 - (i) Murder, attempted murder, manslaughter, or arson;
 - (ii) Assault, assault with a dangerous weapon, mayhem, malicious disfigurement, or threats to do bodily harm;
 - (iii) Burglary;
 - (iv) Robbery;
 - (v) Kidnapping;
 - (vi) Illegal use or possession of a firearm;
 - (vii) Sexual offenses, including indecent exposure; promoting, procuring, compelling, soliciting, or engaging in prostitution; corrupting minors (sexual relations with children); molesting; voyeurism; committing sex acts in public; incest; rape; sexual assault; sexual battery; or sexual abuse; but excluding sodomy between consenting adults;
 - (viii) Child abuse or cruelty to children; or

- (ix) Unlawful distribution of or possession with intent to distribute a controlled substance.
- (g) contain a provision requiring the private entity to obtain a written acknowledgement from each applicant, employee and unsupervised volunteer stating that the private entity has notified them that they are entitled to receive a copy of the criminal background check and to challenge the accuracy and completeness of the report;
- (h) contain a provision requiring the private entity to obtain a written acknowledgement from each applicant, employee and unsupervised volunteer stating that the private entity has notified them that they may be denied employment or a volunteer position, or may be terminated as an employee or volunteer based on the results of the criminal background check;
- (i) contain a provision requiring the private entity to inform each applicant, employee and unsupervised volunteer that a false statement may subject them to criminal penalties; and
- (j) contain a provision requiring the District to identify the positions that will require a criminal background check and/or a traffic records check upon the exercise of each option period of the contract or at any other time specified in the contract.

502 RESPONSIBILITIES OF PRIVATE ENTITY

- 502.1** Before any applicant for employment with a private entity, in either an employee or an unsupervised volunteer position, may be offered a position, the private entity shall inform the applicant that a criminal background check must be conducted on him or her.
- 502.2** Prior to requesting a criminal background check, the private entity shall provide each applicant, employee, or unsupervised volunteer with a form or forms to be utilized for the following purposes:
 - (a) To authorize the Metropolitan Police Department or other entity, as appropriate, to conduct the criminal background check and confirm that the applicant, employee, or unsupervised volunteer has been informed that the private entity is authorized and required to conduct a criminal background check;
 - (b) To affirm whether or not the applicant, employee, or unsupervised volunteer has been convicted of a crime, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet

docket, or has been found not guilty by reason of insanity for any sexual offenses or intra-family offenses in the District of Columbia or their equivalent in any other state or territory of the United States, or for any of the felony offenses described in section 501.1(f) of this chapter;

- (c) To acknowledge that the applicant, employee, or unsupervised volunteer has been notified of his or her right to obtain a copy of the criminal background check report and to challenge the accuracy and completeness of the report;
- (d) To acknowledge that the private entity may choose to deny the applicant employment, assignment to, or an unsupervised volunteer position for which a criminal background check is required based on the outcome of the criminal background check; and
- (e) To inform the applicant or employee that a false statement on the form or forms may subject them to criminal penalties as described in section 506 of this chapter.

- 502.3 The private entity shall direct the applicant or employee to complete the form or forms specified in section 502.2 and notify the applicant or employee when and where to report to be fingerprinted.
- 502.4 Unless otherwise provided in the contract, private entities shall request criminal background checks from the Chief, Metropolitan Police Department (or designee), who shall be responsible for conducting criminal background checks, including fingerprinting, for private entities.
- 502.5 Unless otherwise provided in the contract, private entities shall request traffic record checks from the Director, Department of Motor Vehicles (or designee), who shall be responsible for conducting traffic record checks for private entities.
- 502.6 Private entities shall pay for the costs for the criminal background checks and traffic record checks required under this chapter and the Act, pursuant to the requirements set forth by the Metropolitan Police Department and the Department of Motor Vehicles.
- 502.7 A private entity may make an offer of appointment to, or assign a current employee or applicant to, a compensated position contingent upon receipt from the contracting officer of the Contracting Officer's Technical Representative's (COTR) decision after his or her assessment of the criminal background or traffic record check.
- 502.8 A private entity may not make an offer of appointment to an unsupervised volunteer whose position brings him or her into direct contact with children until

it receives from the contracting officer the COTR's decision after his or her assessment of the criminal background or traffic record check. .

- 502.9** A private entity shall not employ or permit to serve as an unsupervised volunteer an applicant or employee who has been convicted of, has pleaded nolo contendere to, is on probation before judgment or placement of a case on the stet docket because of, or has been found not guilty by reason of insanity for any sexual offenses involving a minor.
- 502.10** Private entities shall conduct periodic criminal background checks as specified in the contract for current employees and unsupervised volunteers.
- 502.11** An employee or unsupervised volunteer may be subject to administrative action including, but not limited to, reassignment or termination at the discretion of the COTR after his or her assessment of a criminal background or traffic record check.
- 502.12** If any application is denied because the COTR determines that the applicant presents a present danger to children or youth, the private entity shall notify the applicant of such determination and inform the applicant in writing that she or he may appeal the denial to the Commission on Human Rights within thirty (30) days of the determination.

503 ASSESSMENT OF INFORMATION FROM CRIMINAL BACKGROUND AND TRAFFIC RECORDS CHECKS

- 503.1** The COTR for the contract shall be solely responsible for assessing the information obtained from each criminal background check report to determine whether a final offer may be made to each applicant or employee. The COTR shall inform the contracting officer of its decision, and the contracting officer shall inform the private entity whether an offer may be made to each applicant.
- 503.2** The COTR for the contract shall be solely responsible for assessing the information obtained from each traffic records check to determine whether a final offer may be made to each applicant or employee. The COTR shall inform the contracting officer of its decision, and the contracting officer shall inform the private entity whether an offer may be made to each applicant.
- 503.3** The information obtained from the criminal background check shall not create a disqualification or presumption against employment or volunteer status of the applicant unless the COTR determines that the applicant poses a present danger to children or youth. The COTR shall consider the following factors to determine whether a final offer may be made to each applicant or employee:

- (a) The specific duties and responsibilities necessarily related to the employment sought;

- (b) The bearing, if any, the criminal offense for which the person was previously convicted will have on his or her fitness or ability to perform one or more of such duties or responsibilities;
- (c) The time which has elapsed since the occurrence of the criminal offense;
- (d) The age of the person at the time of the occurrence of the criminal offense;
- (e) The frequency and seriousness of the criminal offense;
- (f) Any information produced by the person, or produced on his or her behalf, regarding his or her rehabilitation and good conduct since the occurrence of the criminal offense; and
- (g) The public policy that it is beneficial generally for ex-offenders to obtain employment.

504 ACTION AGAINST CONTRACTOR

- 504.1** The contracting officer may take action, in accordance with the "Default" provision the contract, against any private entity who is found to have violated the provisions of this chapter.

505 CONFIDENTIALITY

- 505.1** Criminal background check reports obtained under this section shall be confidential and are for the exclusive use of making employment-related determinations under this chapter. Private entities shall not release or otherwise disclose the reports to any person, except when:

- (a) Required as one component of an application for employment with the private entity;
- (b) Requested by the contracting officer or COTR during an official inspection or investigation;
- (c) Ordered by a court;
- (d) Authorized by the written consent of the person being investigated;
- (e) Otherwise required by the contract; or

- (f) Utilized for a corrective or adverse action in a personnel proceeding, including but not limited to, an administrative action under section 502.10.

505.2 An individual who discloses confidential information in violation of this section is guilty of a criminal offense and, upon conviction, shall be fined not more than \$1,000 or imprisoned for not more than 180 days, or both.

506 PENALTY FOR PROVIDING FALSE INFORMATION

506.1 An applicant for employment or a volunteer position with a private entity who provides false information in the course of applying for the position shall be subject to prosecution pursuant to section 404 of the District of Columbia Theft and White Collar Crimes Act of 1982 (D.C. Law 4-164; D.C. Official Code § 22-2405), and, upon conviction, shall be fined not more than \$1,000 or imprisoned for not more than 180 days, or both.

507 RIGHT TO APPEAL CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE'S DECISION

507.1 If a COTR denies an application, the COTR shall notify the contracting officer who shall advise the private entity to notify applicant of such determination. The private entity shall inform the applicant in writing that she or he may appeal the denial to the Commission on Human Rights within thirty (30) days of the determination.

599 DEFINITIONS

599.1 When used in this chapter, the following terms have the meaning ascribed:

Act - Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 4-1501.01 *et seq.*)(2006 Supp.), as amended by Title II of the Omnibus Public Safety Amendment Act of 2006, effective April 24, 2007 (D.C. Law 16-306; 54 DCR 6577).

Applicant – an individual who has filed a written application for employment, or who has made an affirmative effort through a written application or a verbal request to serve in an unsupervised volunteer position, with a private entity.

Children – individuals twelve (12) years of age and under.

Covered child or youth services provider – any District government agency providing direct services to children and youth and any private entity that contracts with the District to provide direct services to children and youth, or for the benefit of children or youth, that affect the health, safety, and welfare of children or youth, including individual and group counseling, therapy, case management, supervision, or mentoring.

In accordance with Mayor's Order No. 2007-95, the following District agencies shall be subject to the criminal background check and traffic records check provisions of the Act and this chapter for purposes of their own activities, and the activities of private entities and who are parties to contracts entered into on behalf of the following agencies by the Office of Contracting and Procurement:

- * Department of Human Services
- * Department of Health
- * Department of Parks and Recreation
- * Fire and Emergency Medical Services Department
- * Metropolitan Police Department
- * Office of the State Superintendent of Education
- * Department of Mental Health
- * Child and Family Services Agency
- * Department of Youth Rehabilitation Services
- * Department of Employment Services
- * Department on Disability Services
- * Any other agency which as a result of a permanent or temporary change to its mission such as may be caused by reorganization or a similar reason shall become a covered child or youth services provider subject to the Act

Criminal background check – the investigation of an individual's criminal history through the record systems of the Federal Bureau of Investigation and the District of Columbia Metropolitan Police Department.

Employee – an individual who is employed on a full-time, part-time, temporary or contractual basis by a private entity.

Private Entity – any private entity that contracts with the District to provide direct services to children or youth, or for the benefit of children or youth, that affect the health, safety, and welfare of children or youth, including individual and group counseling, therapy, case management, supervision, or mentoring.

Supervised – any person who is under the direct supervision, at all times, of an employee or a volunteer who has received a current, satisfactory criminal background check.

Volunteer – an individual who works without any monetary or any other financial compensation for a private entity.

Youth – an individual between thirteen (13) and seventeen (17) years of age, inclusive.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Hand-delivered comments should be delivered, and mailed comments should be postmarked, no later than thirty (30) days after publication of this notice in the *D.C. Register*.

Comments should be delivered or mailed to the Chief Procurement Officer, Office of Contracting and Procurement, 441 Fourth Street, N.W., Suite 700 South, Washington, D.C. 20001. Copies of the proposed rules may be obtained from the above address.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in § 16 of the Choice in Drug Treatment Act of 2000, effective July 18, 2000 (D.C. Law 13-146; D.C. Official Code § 7-3015) and Mayor's Order 2002-73, dated April 3, 2002, hereby gives notice of the adoption of the following amendments to Title 29 of the District of Columbia Municipal Regulations (DCMR) on an emergency basis on May 2, 2008. The emergency rules are effective upon the date of adoption and will expire on August 30, 2008. The rules amend chapter 23 to establish the requirements for certification of providers under section 4a of Drug Treatment Choice Program and make technical corrections. Emergency action is based on the need to provide recovery support services through a federally authorized voucher program as soon as practical, as authorized by section 4a of the Choice in Drug Treatment Emergency Amendment Act of 2008, effective January 29, 2008 (Act 17-280; to be codified at D.C. Official Code § 7-3004.01).

Pursuant to D.C. Official Code § 7-3015(a), the proposed and emergency rules will be submitted to the Council of the District of Columbia for review and approval. This rule will become effective upon Council approval, or forty-five (45) days after submission, if the Council has not disapproved the proposed rulemaking, and publication of the final rules in the *D.C. Register*.

The Acting Director also gives notice of his intent to take final rulemaking action to adopt this amendment in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 23 of Title 29 (Public Welfare) (May 1987) of the DCMR is amended as follows:

Amend the table of contents for Chapter 23 by adding the following after the description for section 2367:

2368 Access to Recovery Certification

A new subsection 2300.14 is added to read as follows:

2300.14 A facility or provider intending to provide services under the Access to Recovery Program (ATR Program) established by § 4a of the Choice in Drug Treatment Act of 2000 shall apply for certification under § 2368. The requirement to apply for ATR Program certification under this subsection shall apply to a facility currently certified under this chapter, or intending to seek certification under this chapter, as a substance abuse treatment provider, if the facility also intends to provide services under the ATR Program.

A new subsection 2304.5 is added to read as follows:

- 2304.5 A provider certified to provide services solely under § 2368 shall be exempt from any other requirements in this chapter, unless otherwise required under § 2368, and provided that the provider is not also a substance abuse treatment provider.

A new section 2368 is added to read as follows:

2368 Access to Recovery Program

- 2368.1 A provider intending to provide recovery support services under this section shall submit an application on a form approved by the Director. The certification provided under this section shall be in addition to certification under this chapter for substance abuse treatment services if the provider currently offers or intends to offer substance abuse treatment services. The application shall include the following information:

- (a) Evidence of a valid Certificate of Occupancy and other government certifications necessary for the specific services the provider intends to provide;
- (b) A current organizational chart;
- (c) A list of the specific recovery support services the provider intends to provide for each target population;
- (d) A physical description of the facility where services are to be provided;
- (e) A description of the provider's staffing capacity including:
 - (1) Total number of staff providing recovery support services;
 - (2) Client to staff ratio;
 - (3) Number of program clients the provider can serve;
 - (4) Language fluency of the staff; and
 - (5) Minimum qualifications, experience, and training required of staff;
- (f) A description of the provider's program operations including staffing, location, and days and hours of operation;

- (g) The specific qualifications, licensure, training, experience and certification of the staff providing recovery support services; and
- (h) Documentation of the following:
 - (1) Organization mission statement;
 - (2) Organization directors or governing members;
 - (3) Policies and procedures;
 - (4) Organization code of ethics;
 - (5) Risk management strategy, including liability insurance;
 - (6) Consent form for services to be rendered;
 - (7) Statement of confidentiality; and
 - (8) Financial infrastructure of the organization.

2368.2 The Director shall review each application and inform the applicant of any deficiencies. The applicant shall supply any missing or incomplete information or documentation. The Director shall approve or disapprove a completed application within thirty (30) days of receipt by the Department. Certification under this section shall be for a period of two (2) years and shall be renewable for additional two (2) year periods, subject to the availability of ATR Program funding.

2368.3 The Department and its authorized agents, upon presentation of proper credentials, shall have the authority to enter the premises of a provider during normal operating hours for the purpose of conducting announced or unannounced inspections to ensure compliance with certification standards. An inspection conducted under this subsection shall comply with the requirements of sections 2306, 2307, and 2308 of this chapter.

2368.4 A provider certified under this section shall comply with the records management standards for confidentiality, and maintenance and reporting, and storage and retention under sections 2353, 2354, and 2355 of this chapter.

2368.5 A provider certified under this section shall comply with the fiscal management standards under section 2315 of this chapter.

2368.6 A provider certified under this section shall comply with the facility environment and safety standards under section 2322 of this chapter.

- 2368.7 If the provider provides transportation services, the provider shall comply with the vehicle environment and safety standards under section 2323 of this chapter.
- 2368.8 If the provider provides a food service, the provider shall comply with the food and nutrition standards under section 2325 of this chapter.
- 2368.9 The Department may refuse to issue or renew, or may revoke or suspend a certification under this section for failure to comply with the provisions of this section, or other applicable District or federal laws. Action to deny, suspend or revoke certification under this section shall be conducted pursuant to the procedures set forth in section 2367 of this chapter.

Section 2399 is amended by adding the following definitions:

Access to Recovery Program or ATR Program—the voucher program for the provision of recovery support services under section 4a of the Choice in Drug Treatment Act of 2000, effective July 18, 2000 (D.C. Law 13-146; D.C. Official Code § 7-3003.01).

Act—the District of Columbia Substance Abuse Treatment and Prevention Act of 1989 (“Act”) effective March 15, 1990 (D.C. Law 8-80; D.C. Official Code § 44-1201 *et seq.*).

Provider—a person, firm, corporation, partnership, or organization that provides recovery support services, substance abuse treatment services, or a combination of substance abuse treatment services and recovery support services.

Recovery support services—services provided through the Access to Recovery Program, which may include care coordination services, spiritual and faith based support services, community based support services, educational support services, parenting classes, family counseling services, child care, transportation, and other services related to, but not including, substance abuse treatment, with the exception of methamphetamine-related treatment services. Methamphetamine-related treatment services provided through the Access to Recovery Program shall be provided solely by providers certified pursuant to section 2300, not including section 2300.14.

Persons desiring to comment on these proposed rules should submit comments in writing to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002, no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Copies of these proposed rules may be obtained between 8:30 A.M. and 5:00 P.M. at the address stated above.

D.C. DEPARTMENT OF HUMAN RESOURCES**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director of the D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000 and Mayor's Order 2007-95, dated April 18, 2007; and in accordance with the provisions of Title II of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 4-1501.01 *et seq.*) (2006 Supp.), as amended by section 204 of Title II of the Omnibus Public Safety Amendment Act of 2006, effective April 24, 2007 (D.C. Law 16-306; D.C. Official Code § 4-1501.05) (2007 Supp.) (hereinafter jointly referred to as the Act), hereby gives notice of the adoption of the following emergency rules. The Act established criminal background and traffic record checks requirements for District government employees providing direct services to children or youth in District government agencies considered "*covered child or youth services providers.*" These rules amend subsections 414.2 (d) and (e) of Chapter 4, Organization for Personnel Management, of Title 6 of the District of Columbia Municipal Regulations (DCMR), on the subject of *covered agencies*, to delete the language limiting agency coverage pursuant to the Act for the Fire and Emergency Medical Services Department (FEMSD) and Metropolitan Police Department (MPD), to specific organizational units within the FEMSD and MPD. These emergency rules are necessary for the immediate preservation of the peace, safety, and welfare of the District government and District government agencies subject to the provisions of the Act. Because the FEMSD and MPD will be requiring additional employees subject to the checks as a result of these changes, action was taken on May 5, 2008 to adopt the following rules on an emergency basis effective May 5, 2008. These rules shall remain in effect for up to one hundred twenty (120) days from May 5, 2008, unless earlier superseded by another rulemaking notice.

The Director, DCHR, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with the Act, hereby gives notice of the intent to adopt the following rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The Act establishes criminal background and traffic record checks requirements for District government employees providing direct services to children or youth in District government agencies considered "*covered child or youth services providers.*" These rules would amend subsections 414.2 (d) and (e) of Chapter 4, Organization for Personnel Management, of Title 6 of the DCMR, on the subject of *covered agencies*, to delete the language limiting agency coverage pursuant to the Act for the FEMSD and MPD, to specific organizational units within the FEMSD and MPD. Upon adoption, these rules will amend Chapter 4, Organization for Personnel Management, of Title 6 of the DCMR, published at 32 DCR 75 (January 4, 1985) and amended at 33 DCR 4447 (July 25, 1986), 51 DCR 928 (January 23, 2004), 51 DCR 11591 (December 24, 2004), 52 DCR 6646 (July 15, 2005), and 55 DCR 724 (January 25, 2008).

CHAPTER 4**ORGANIZATION FOR PERSONNEL MANAGEMENT**

Subsections 414.2 (d) and (e) of Section 414 of Chapter 4 of the D.C. Personnel Regulations are amended to read as follows:

- (d) Fire and Emergency Medical Services Department (FEMSD);
- (e) Metropolitan Police Department (MPD);

Comments on these proposed regulations should be submitted, in writing, to Ms. Brender L. Gregory, Director, DCHR, 441 4th Street, NW, Suite 300 South, Washington, D.C. 20001, within thirty (30) days of the date of the publication of this notice. Additional copies of these proposed rules are available from the above address.

D.C. DEPARTMENT OF HUMAN RESOURCES**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director, Department of Human Resources (DCHR), with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title I of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-353, D.C. Official Code § 1-620.31 *et seq.*) (2006 Repl.), as amended by section 4 (b) of the Anti-Drunk Driving Clarification Amendment Act of 2006 (Act), effective March 2, 2007 (D.C. Law 16-195; D.C. Official Code § 1-620.33) (2007 Supp.), hereby gives notice of the adoption of the following emergency rules. Title I of D.C. Law 13-353, as amended, establishes drug and alcohol testing requirements for District government employees serving children or youth. These rules amend Chapter 39, Testing for the Presence of Controlled Substances and Alcohol, of Title 6 of the District of Columbia Municipal Regulations (DCMR), on an emergency basis, to implement the provisions of the Act relating to alcohol concentration levels of motor vehicle operators in agencies covered by the provisions of D.C. Law 13-353, and make other amendments to sections 3901 through 3910, and 3999 of the chapter. The amendment pursuant to the Act is contained in section 3905.4 of the chapter. These emergency rules are necessary for the immediate preservation of the peace, safety, and welfare of the District government and District government agencies subject to the provisions of Title I of D.C. Law 13-353 and the Act in particular. Because the Mayor plans to begin drug and alcohol testing of employees in covered agencies by July 1, 2008, action was taken on April 30, 2008 to adopt the following rules on an emergency basis effective April 30, 2008. These rules shall remain in effect for up to one hundred twenty (120) days from April 30, 2008, unless earlier superseded by another rulemaking notice.

The Director, DCHR, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title I of D.C. Law 15-353, as amended, hereby gives notice of the intent to adopt the following rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. Title I of D.C. Law 13-353, as amended, establishes drug and alcohol testing requirements for District government employees serving children or youth. These rules would amend Chapter 39, Testing for the Presence of Controlled Substances and Alcohol, of Title 6 of the DCMR, to implement the provisions of the Act relating to alcohol concentration levels of motor vehicle operators in agencies covered by the provisions of D.C. Law 13-353, as amended, and make other amendments to sections 3901 through 3910, and 3999 of the chapter. The amendment pursuant to the Act is contained in section 3905.4 of the chapter. Upon adoption, these rules will amend Chapter 39, Testing for the Presence of Controlled Substances and Alcohol, of Title 6 of the DCMR, published at 47 DCR 7931 (September 29, 2000) and amended at 52 DCR 6662 (July 15, 2005).

CHAPTER 39**TESTING FOR THE PRESENCE OF CONTROLLED
SUBSTANCES AND ALCOHOL**

Sections 3901 through 3910, and 3999 of Chapter 39 of the D.C. Personnel Regulations, are amended to read as follows:

3901 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS: GENERAL PROVISIONS

- 3901.1 Pursuant to Title I of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 13-353; D.C. Official Code § 1-620.31 *et seq.*) (2006 Repl.), as amended by section 4 (b) of the Anti-Drunk Driving Clarification Amendment Act of 2006, effective March 2, 2007 (D.C. Law 16-195; D.C. Official Code § 1-620.33) (2007 Supp.), and as a means of ensuring the health and safety of children and youth, a Mandatory Drug and Alcohol Testing Program for Safety-Sensitive Positions (Program) has been established within the District government. The purpose of the Program is to test appointees (new hires) into and employees in safety-sensitive positions for illegal drug and alcohol use, and including random, reasonable suspicion, and post-accident testing.
- 3901.2 Each personnel authority with safety-sensitive positions shall contract with a professional testing vendor or vendors to conduct testing under the Program. The vendor or vendors shall ensure quality control, chain-of-custody for samples, reliable collection and testing procedures, and any other safeguards needed to guarantee accurate and fair testing, in accordance with the procedures in 49 C.F.R. Part 40, and District government procedures.
- 3901.3 The vendor or vendors selected to conduct the testing shall be certified by the United States Department of Health and Human Services (HHS) to perform job-related drug and alcohol forensic testing.
- 3901.4 District government employees in safety-sensitive positions shall be given written notice that the District government is implementing a drug and alcohol testing program for safety-sensitive positions pursuant to D.C. Official Code § 1-620.31 *et seq.*, at least thirty (30) days in advance of implementation of the Program. No employee shall be tested prior to receiving the thirty-day (30-day) initial notification of the Program.
- 3901.5 The Director, D.C. Department of Human Resources (DCHR), shall develop operating policies and procedures for the Program for agencies subordinate to the Mayor that have safety-sensitive positions.
- 3901.6 The provisions of the Program are specified in sections 3902 through 3910 of this chapter.
- 3901.7 Position vacancy announcements for positions identified and designated as safety-sensitive shall include a statement informing each applicant that:

- (a) The position for which he or she is applying has been identified and designated as a safety-sensitive position subject to mandatory drug and alcohol testing;
- (b) If tentatively selected for the safety-sensitive position, he or she will be required to submit to testing for illegal drug use prior to appointment, and that appointment to the position will be contingent upon a negative drug test result; and
- (c) Once hired into a safety-sensitive position, he or she shall be subject to mandatory random drug or alcohol testing.

3901.8 The position description for each position designated as safety-sensitive shall include a statement of such designation and a statement indicating that incumbents of the position shall be subject to testing for drug and alcohol use.

3901.9 The Director, DCHR, shall publish the list of safety-sensitive positions in agencies under the personnel authority of the Mayor, in the District Personnel Manual (or any other procedural manual developed). The list shall be updated periodically, as needed.

3902 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS: APPLICABILITY

3902.1 Pursuant to D.C. Official Code § 1-620.32 (a) (2006 Repl.), the following appointees and District government employees shall be subject to drug and alcohol testing:

- (a) An appointee (new hire) to a safety-sensitive position with a District government agency;
- (b) A District government employee in safety-sensitive position who has a reasonable suspicion referral; and
- (c) A post-accident District government employee in a safety-sensitive position, as soon as reasonably possible after the accident.

3902.2 The following subordinate agencies shall be covered under the Program, on the basis that each one of these agencies, as a whole or certain components thereof, has safety-sensitive positions:

- (a) Department of Human Services;
- (b) Department of Health;
- (c) Department of Parks and Recreation;

- (d) Fire and Emergency Medical Services Department;
- (e) Metropolitan Police Department;
- (f) Traffic Safety Administration within the District Department of Transportation;
- (g) Office of the State Superintendent of Education;
- (h) Department of Youth Rehabilitation Services;
- (i) Department of Employment Services;
- (j) Department of Mental Health;
- (k) Child and Family Services Agency;
- (l) Department of Disability Services;
- (m) D.C. Public Schools; and
- (n) Any other subordinate or independent District government agency subject to these regulations, including an agency which, as a result of a permanent or a temporary change to its mission such as may be caused by reorganization.

3903 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS: STANDARDS FOR THE IDENTIFICATION OF POSITIONS SUBJECT TO TESTING

3903.1 Upon consulting with the head of a District government agency with safety-sensitive positions, the appropriate personnel authority shall identify and determine which positions in the agency shall be designated safety-sensitive positions subject to mandatory drug and alcohol testing under the Program. In identifying the safety-sensitive positions, the personnel authority shall ensure that the duties and responsibilities of each position require the provision of services that affect the health, safety, and welfare of children or youth or services for the benefit of children or youth, including but not limited to at least one (1) of the following duties and responsibilities:

- (a) Childcare duties;
- (b) Recreational activities;
- (c) Delinquency prevention and control services, including custody, security, supervision, and residential and community support services for committed and detained juvenile offenders;

- (d) Educational activities;
- (e) Individual counseling;
- (f) Group counseling;
- (g) Assessment, case management, and support services;
- (h) Psychiatric and psychological assessment services;
- (i) Developmental, speech, and language evaluation services;
- (j) Diagnostic evaluation and treatment services;
- (k) Childhood development services;
- (l) Medical or clinical services;
- (m) Therapeutic services, including individual and group therapy, and play therapy;
- (n) Prevention and intervention services;
- (o) Mentoring services;
- (p) Youth care services;
- (q) Healthcare services, including medical, behavioral, mental health, dental, vision, nutrition, or developmental services;
- (r) Cultural enrichment services;
- (s) Public safety services, including counseling or education intervention services about safety, crime prevention, fire safety, or youth problem-solving;
- (t) Youth employment services; or
- (u) Driving a motor vehicle to transport children or youth.

3903.2 The following standards shall be applied in designating a position as safety-sensitive:

- (a) The underlying guiding standard to be applied in identifying safety-sensitive positions shall be one of reasonableness, coupled with the standards outlined in section 3903.2 (b) through (f) of this section, as applicable.
- (b) A determination that a position is a safety-sensitive position shall be based on a comprehensive analysis of the position description or statement of duties, as

applicable. The purpose of the analysis shall be to determine if the position description or statement of duties contains at least one (1) of the duties and responsibilities listed in section 3903.1 of this section or similar duties and responsibilities and that any incumbent of the position will perform the duties and responsibilities personally and routinely.

- (c) Location in a District government agency with safety-sensitive positions does not automatically make a position or its incumbent subject to testing under the Program.
- (d) Strictly tangential, casual, or occasional contact with children or youth does not automatically make an employee subject to testing under the Program.
- (e) Administrative, clerical, or technical support positions and staff within the immediate office of the head of a District government agency with safety-sensitive positions, and other components, units, or divisions of the agency that provide non-operational support services shall not be subject to testing under the Program unless the position descriptions or statements of duties, as applicable, contain at least one (1) of the duties and responsibilities listed in section 3903.1 of this section, or similar duties and responsibilities related to the direct provision of services to children or youth, and a determination is made that any incumbents of the positions will perform the duties and responsibilities personally and routinely.
- (f) An employee whose assignment changes from non-covered duties and responsibilities to covered duties and responsibilities shall be subject to testing under the Program while in the covered temporary assignment.

3904 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS – NOTIFICATION REQUIREMENTS

3904.1 Pursuant to D.C. Official Code § 1-620.35 (a) (2006 Repl.), the Mayor and other personnel authorities with safety-sensitive positions shall:

- (a) Issue a drug and alcohol testing policy; and
- (b) Notify employees in safety-sensitive positions at least thirty (30) days in advance of implementing the Program.

3904.2 The drug and alcohol testing policy shall inform employees in safety-sensitive positions of all of the following:

- (a) Which employees will be tested;
- (b) Circumstances under which an employee will be tested;

- (c) The methodology to be used for testing; and
- (d) The consequences of a positive test result.

- 3904.3 Each employee occupying a safety-sensitive position shall sign an acknowledgment that he or she received the employee notification informing him or her of the requirements for alcohol and drug testing under the Program.
- 3904.4 Upon acknowledging receipt of the written notification, each employee occupying a safety-sensitive position shall be given one (1) opportunity to seek treatment if he or she acknowledges a drug or alcohol problem. An employee who so acknowledges a drug or alcohol problem shall be allowed to undergo and complete a counseling and rehabilitation program, and shall not be subject to administrative action while completing the counseling and rehabilitation program; however, the employing agency shall immediately detail the employee to a non safety-sensitive position while he or she completes the counseling and rehabilitation program.

3905 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS: TESTING

- 3905.1 Appointees and District government employees subject to testing under the Program shall be tested for drug and alcohol use as specified in this section and section 3906 of this chapter.
- 3905.2 A final offer of appointment to a covered position shall not be made until after the results of any test conducted are received and it is determined that the test result is negative.
- 3905.3 Pursuant to D.C. Official Code § 1-620.32 (b) (2006 Repl.), District government employees in safety-sensitive positions shall be subject to random testing, unless the employing agency has additional requirements for drug and alcohol testing of its employees, in which case the stricter testing requirements shall apply.
- 3905.4 A District government employee who is required to drive a motor vehicle to transport children or youth in the course of performing his or her official duties shall be deemed to have given his or her consent, subject to the conditions of sections 3901 through 3910 of this chapter, to the testing on the employee's urine or breath for the purpose of determining drug or alcohol content whenever a supervisor has reasonable cause or a police officer arrests such employee for a violation of the law and has reasonable grounds to believe such employee to have been operating or in physical control of a motor vehicle within the District of Columbia while the employee's alcohol concentration was 0.08 grams or more per two hundred and ten (210) liters of breath; or while under the influence of an intoxicating liquor or any drug or combination thereof; or while the employee's ability to operate a motor vehicle is impaired by the consumption of intoxicating liquor.

- 3905.5 An employee who acknowledges a drug or alcohol problem upon receiving the initial thirty-day (30-day) notification, and who completes a counseling and rehabilitation program for illegal drug use or alcohol abuse, shall be tested before being allowed to return to the safety-sensitive position he or she occupied before completion of such a program. After returning to the safety-sensitive position, the employee shall be subject to testing as specified in sections 3905.3 and 3905.4 of this section and section 3908 of this chapter, as applicable.

3906 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS: TESTING METHODOLOGY

- 3906.1 Testing for illegal drug use shall be conducted by collecting a urine sample from the individual being tested.
- 3906.2 Testing for alcohol use shall be conducted utilizing an evidentiary breath-testing device or EBT, commonly referred to as a "breathalyzer."
- 3906.3 The vendor or vendors selected to conduct the testing shall conduct the breathalyzer test for alcohol use; or collect urine specimens on site for drug testing at a location designated by each personnel authority for such purposes.
- 3906.4 In the case of drug testing, the vendor shall split each sample and perform enzyme-multiplied-immunosorbent assay technique (EMIT) testing on one (1) sample and store the split of that sample. A positive EMIT test shall be confirmed by the vendor, using the gas chromatography/mass spectrometry (GCMS) methodology.
- 3906.5 The appropriate personnel authority shall notify, in writing, any appointee or employee in a safety-sensitive position found to have a confirmed positive urinalysis test result. The appointee or employee may then authorize that the stored sample be sent to another HHS-certified laboratory of his or her choice, at his or her expense, for a confirmation, using the GCMS testing method.
- 3906.6 Probable cause or reasonable suspicion and post-accident employee testing shall follow the same procedures set forth in this section. In the case of a reasonable suspicion referral, as confirmed by a second supervisor, or a post-accident employee, a supervisor shall escort the employee to the vendor's test site for specimen collection or a breathalyzer.
- 3906.7 In the event that a covered employee may require medical care following an accident, medical care shall not be delayed for the purpose of testing.
- 3906.8 A breathalyzer test shall be deemed positive if the vendor determines that one (1) milliliter of the employee's breath (consisting of substantially alveolar air) contains .38 micrograms or more of alcohol.

3907 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS: POSITIVE DRUG AND ALCOHOL TESTS

3907.1 The following shall be grounds for termination of employment, provided that the notification requirements in section 3904 of this chapter have been met:

- (a) A confirmed positive drug test result;
- (b) A positive breathalyzer test;
- (c) Refusal to submit to a drug test or breathalyzer; or
- (d) In the case of an employee who acknowledged a drug and alcohol problem as specified in section 3904.4 of this chapter, failure to complete the counseling and rehabilitation program, or a confirmed positive drug test result for the test conducted upon completion of the counseling and rehabilitation program pursuant to section 3905.5 of this chapter.

3907.2 The appropriate personnel authority shall decline to make a final offer of employment to a safety-sensitive position to an appointee if he or she:

- (a) Refuses to take the required drug test; or
- (b) Has a confirmed positive drug test result.

3907.3 A person described in section 3907.2 of this section shall not reapply for appointment to a safety-sensitive position with the District government for a period of one (1) year from the date of his or her refusal to take the required drug test or the date of the confirmed positive test result, as applicable.

3907.4 A District government employee who is terminated for any of the events described in section 3907.1 of this section shall be denied subsequent appointment to a safety-sensitive position with the District government for a period of one (1) year from the date of any of these events.

3908 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS: REASONABLE SUSPICION REFERRALS

3908.1 The immediate supervisor or manager of an employee occupying a safety-sensitive position shall make a reasonable suspicion referral for testing of an employee in a safety-sensitive position when there is a reasonable suspicion that the employee is under the influence of illegal drugs or alcohol to the extent that the employee is too impaired to perform his or her duties.

3908.2 Prior to contacting the appropriate personnel authority to make a referral under this section, the supervisor or manager shall:

- (a) Have probable cause or reasonable suspicion that the employee is under the influence of an illegal drug or alcohol to the extent that the employee's ability to perform his or her job is impaired;
- (b) Gather all information and facts to support this suspicion; and
- (c) Receive a second opinion from another supervisor or manager.

3908.3 A reasonable suspicion referral may be based on direct observation of illegal drug use or possession, physical symptoms of being under the influence of illegal drugs, or intoxicated by alcohol, a pattern of erratic behavior, work performance indicators of drug or alcohol abuse, or any other reliable indicators.

3908.4 Testing resulting from a reasonable suspicion referral shall be conducted as specified in sections 3905 and 3906 of this chapter.

3909 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS: REQUIRED TRAINING

3909.1 Agencies with safety-sensitive positions shall be responsible for providing training in drug abuse detection and recognition; documentation; intervention; and any other appropriate topics, for supervisors and managers in agencies with covered employees.

3910 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS: RECORD KEEPING AND CONFIDENTIALITY

3910.1 All matters relating to test results and applicants for employment and covered employees involved shall be confidential. All records relating to alcohol and drug testing shall be kept by the appropriate personnel authority in a place apart from employment applications or employees' official personnel folders.

3910.2 The results of a random test shall not be turned over to any law enforcement agency without the subject's written consent.

3999 DEFINITIONS

3999.1 When used in this chapter, the following terms shall have the meaning ascribed:

Alcohol – for the purposes of sections 3901 through 3910 of this chapter, the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols in methyl and isopropyl alcohol, no matter how it is packaged or in what form the alcohol is stored, utilized or found.

Applicant – for the purposes of sections 3901 through 3910 of this chapter, a person who has filed a resume or written application for District government employment in a safety-sensitive position.

Appointee – for the purposes of sections 3901 through 3910 of this chapter, a person who has been made a tentative offer of appointment with the District government in a safety-sensitive position.

Breathalyzer/Evidential Breath Testing Device (EBT) – for the purposes of sections 3901 through 3910 of this chapter, method for measuring the level of alcohol present in an individual.

Children – for the purposes of sections 3901 through 3910 of this chapter, persons twelve (12) years of age and under.

Days – calendar days, unless otherwise specified.

Drugs – for the purposes of sections 3901 through 3910 of this chapter, illegal drugs for which tests are required under 49 C.F.R. part 40, such as marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates; but not authorized prescription medications.

Enzyme-Multiplied-Immunoassay Technique (EMIT) – for the purposes of sections 3901 through 3910 of this chapter, initial method that is used to test for drugs in urine samples.

Gas chromatography mass spectrometry (GCMS) methodology – for the purposes of sections 3901 through 3910 of this chapter, the only authorized confirmation-testing method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.

Personnel authority – a person or entity with the authority to administer all or part of a personnel management program as provided in D.C. Official Code § 1-604.01 *et seq.* (2006 Repl.).

Post-accident employee – for the purposes of sections 3901 through 3910 of this chapter, a District government employee in a safety-sensitive position who, while on duty, is involved in a vehicular or other type of accident resulting in personal injury or property damage, or both, in which the cause of the accident could reasonably be believed to have been the result, in whole or in part, from the use of drugs or alcohol on part of the employee.

Probable cause – for the purposes of sections 3901 through 3910 of this chapter, a reasonable belief by a supervisor that an employee in a safety-sensitive position is under the influence of an illegal drug or alcohol to the extent that the employee's ability to perform his or her job is impaired.

Random testing – for the purposes of sections 3901 through 3910 of this chapter, drug or alcohol testing conducted on a District government employee in a safety-sensitive position at an

unspecified time for purposes of determining whether the employee has used drugs or alcohol and, as a result, is unable to satisfactorily perform his or her employment duties.

Reasonable suspicion – for the purposes of sections 3901 through 3910 of this chapter, a reasonable belief by a supervisor that an employee in a safety-sensitive position is under the influence of an illegal drug or alcohol to the extent that the employee's ability to perform his or her job is impaired.

Reasonable suspicion referral – for the purposes of sections 3901 through 3910 of this chapter, referral of an employee in a safety-sensitive position for testing by the District government for drug or alcohol use.

Safety sensitive position – for the purposes of sections 3901 through 3910 of this chapter, a position with duties and responsibilities that require the incumbent to provide services that affect the health, safety, and welfare of children or youth, including direct care and custody of children or youth, including but not limited to the duties and responsibilities listed in section 3903.1 (a) through (t) of this chapter.

Subordinate agency – any agency under the direct administrative control of the Mayor, including, but not limited to, the agencies listed in section 301 (q) of the CMPA (D.C. Official Code § 1-603.01 (17)) (2007 Supp.).

Youth – for the purposes of sections 3901 through 3910 of this chapter, persons between thirteen (13) and seventeen (17) years of age, inclusive.

Comments on these proposed regulations should be submitted, in writing, to Ms. Brender L. Gregory, Director, DCHR, 441 4th Street, NW, Suite 300 South, Washington, D.C. 20001, within thirty (30) days of the date of the publication of this notice. Additional copies of these proposed rules are available from the above address.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF EMERGENCY and PROPOSED RULEMAKING**

Case No. 08-18

(Text Amendments – Use of former public school buildings)

June 16, 2008

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in §§ 1 and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Official Code §§ 6-641.01 and 641.07) and the authority set forth in § 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c)), hereby gives notice of the adoption, on an emergency basis, of amendments to §§ 199, 201.1, and 2101.1 of the Zoning Regulations (DCMR, Title 11).

These amendments permit the use of former public school buildings by District government agencies (subject to certain limitations), medical and dental clinics, community service uses, and non-profit office uses.

This action is being taken on an emergency basis because, absent immediate action, the former public buildings will become vacant, and likely become blighted and a threat to public safety. Emergency action is also necessary to avoid unnecessary costs to winterize the vacant school buildings. In addition, there are many District agencies with leases due to expire in the near future. The immediate renovation the former school buildings will assure that these agencies will have a place to relocate, thereby avoiding the need for temporary space or the payment of occupancy holdover penalties.

This emergency rule was adopted on June 16, 2008, and became effective on that date.

The Commission also gives notice of its intent to take final rulemaking action to adopt the following amendments to the Zoning Regulations in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register* or thirty days following referral of this amendment to the National Capital Planning Commission, whichever occurs last.

The emergency rule will expire on October 14, 2008, which is the 120th day after the adoption of the rule, or upon the publication of a Notice of Final Rulemaking in the *Register*, whichever occurs first.

The proposed amendments to the Zoning Regulations are as follows:

1. CHAPTER 1, THE ZONING REGULATIONS, §199 Definitions, is amended by adding the following definition.

Community Service Use - A not for profit use established primarily to benefit and serve the population of the community in which it is located.

2. CHAPTER 2, R-1 RESIDENCE DISTRICT USE REGULATIONS, § 201.1, is amended as follows:

Z.C. NOTICE OF EMERGENCY & PROPOSED RULEMAKING

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A. By adding the following new paragraph.

- (v) The following uses are permitted if located in a building owned by the District of Columbia that formerly served as the location of a public school:
- (1) District government agency use or uses (including office uses), provided:
- (a) The principal use of the property shall not be interior or exterior storage, vehicle parking, storage of impounded vehicles, or vehicle maintenance;
- (b) The use shall not extend outside the building unless accessory and incidental to the principal interior uses; and
- (c) Any storage shall be fully enclosed;
- (2) Medical and dental clinics;
- (3) Community service use or uses; and
- (4) Office use of a not for profit organization.

B. By repealing § 222.

3. CHAPTER 21, OFF-STREET PARKING REQUIREMENTS, § 2101, Schedule of Requirements for Parking Spaces, § 2101.1, is amended by adding the following to the chart under the heading entitled "Schools":

| | |
|---|---|
| <u>Uses in former public school buildings authorized by 11 DMCR § 201.1 (v)</u> | |
| All Districts | Parking requirements will be those that apply in the most restrictive zone district in which the use is otherwise first permitted as a matter of right. |

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.